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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,556	01/29/2004	Edwin Ryan	1775.001US1	5102
21186	7590	03/22/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			SAM, CHARLES H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/767,556	RYAN, EDWIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles H. Sam	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 January 2004.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shock 3942519. Shock discloses an instrument comprising a gripping portion 24, a small diameter instrument portion 14 having a length extending from the gripping portion, and a support member 26 engaging the small diameter instrument portion 14 along the length, providing lateral support, wherein an unsupported distal portion of the length is adjustable.

Regarding claim 2, Shock discloses the small diameter instrument 14 that is a hollow tube portion.

Regarding claim 3, Shock discloses the support member 26 including a member 48 surrounding the small diameter instrument 14.

Regarding claim 4, Shock discloses the support member 26 that is movable relative to the gripping portion 24.

Regarding claim 5, Shock discloses the small diameter instrument 14 that is movable relative to the gripping portion 24.

Regarding claim 6, Shock discloses the adjustment means as indicated by double headed arrow 45 for adjusting the support member 26.

Regarding claim 17-19, the Shock device is inherently capable of performing the recited method steps.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shock 3942519 in view of Evvard et al 3736938. Shock discloses the invention as claimed except for a cylinder surrounding a part of the small diameter instrument. However, Evvard discloses as shown in figures 1 and 2, a cylinder 25 that serves as a sheath for the small diameter instrument 18. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Shock by including a cylinder in view of Evvard to provide a guiding sheath for the small diameter instrument.

Regarding claims 8-10, the size of the small diameter instrument or the cylinder, and the material of the cylinder would have been an obvious matter of design choice.

Regarding claim 11, note the Shock reference.

Regarding claim 12, note the Evvard reference.

Regarding claim 14, Evvard discloses the hollow tube portion 25 that is directly attached to the gripping portion 10.

Regarding claim 20, the device of Shock in view of Evvard is inherently capable of performing the recited method step.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles H. Sam whose telephone number is (571) 272-4703. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHS  
March 14, 2005

  
KEVIN T. TRUONG  
PRIMARY EXAMINER